HONOURABLE SHRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No. 13348 OF 2006

Dated 17th August, 2006

Between:
Joga Jayanth S/o Trimurthulu

… Petitioner

And

Director of Government Examinations,
Chapal Road, Hyderabad and others.

… Respondents.

ORDER:

The petitioner, a minor student, represented by his natural guardian and father, filed this writ petition for issuance of a writ of mandamus declaring the order of the 1st Respondent dated 18.5.2006 in cancelling the answer sheets of the petitioner before he was debarred from the examinations as illegal, arbitrary and violative of principles of natural justice and to set aside the cancellation order of the answer sheets dated 18.5.2006, and, for a consequential direction to the 1st respondent to consider Paper-I Composite Telugu written by the petitioner on 21.3.2006 with Hall Ticket No.1163656 as part of the papers written by the petitioner with subsequent Hall Ticket No. 0501710 and to declare the final result of the petitioner of the S.S.C. examinations.

The petitioner, a student of Vignan Steel City Public School, Duvvada, Vadipudi Post, Visakhapatnam District has appeared for SSC public examinations in the month of March, 2006 at Sri Aurobindo Ideal High School, Steel City, Visakhapatnam, the center allotted to him, with Hall Ticket No.1163656. Examinations were started on 21.3.2006. He appeared for the first examination i.e. Paper-I – Composite Telugu, on 21.3.2006 and also appeared for some more examinations, namely, Paper-II – Sanskrit, Paper-III – Hindi and Paper-IV – English-I. When the petitioner was writing Paper-V i.e. English-II on 25.3.2006, flying squad has booked a case against him on the ground of malpractice, as his additional answer script was found with another candidate by name G.Samba Siva Raju with Roll

No.1163658. It is the case of the petitioner, as mentioned in the affidavit filed in support of the petition that he is a meritorious student throughout his career and he did not indulge in any malpractice. It is his case that due to fan air, the additional answer script has fallen on the floor and the invigilator himself has given the said paper to the other candidate by name, G.Samba Siva Raju and he is not at fault. Immediately after malpractice case was booked against the petitioner, as he was not allowed to write the subsequent examinations after 25.3.2006, petitioner through his father had made representations to allow him to write advance supplementary examinations scheduled in the month of May, 2006. After the case was booked for malpractice by obtaining the report from the concerned District Educational Officer and Assistant Examiner, matter was referred to Select Malpractice Committee, which has taken decision on 18.5.2006 to impose the punishment of cancellation of the performance of the petitioner in the examinations held in the month of March, 2006, but, however, later, on representations being made, the petitioner was permitted to write advance supplementary examinations. However, with regard to other candidate, who has copied from the additional answer script of the petitioner by name, G.Samba Siva Raju with Roll No.1163658, the malpractice committee apart from canceling the performance of his examinations, debarred him for two subsequent examinations. Though, subsequently, in view of the decision taken by the Select Malpractice Committee, the petitioner was allowed to write advance supplementary examinations held in the month of May, 2006, but, however, as the communication regarding permission and hall ticket sent on 24th and 25th May, 2006 by the respondent-Board telegraphically reached the concerned school after the end of the first examination i.e. on 29.5.2005 at 15 hours, the petitioner could not write the examination on that day and had missed one examination i.e.

Telugu Paper-I. However, he had written all other examinations from 30.5.2006. Hence, the present writ petition to consider paper-I, Composite Telugu written by the petitioner on 21.3.2006 with Hall Ticket No.1163656.

In the counter-affidavit filed on behalf of the respondents, it is stated that as much as the case of malpractice was booked against the petitioner, report was called for from the Assistant Examiner who has stated in his report that a candidate with Roll No.1163658 has copied all the answers from the additional answer sheet of the candidate with Roll No. 1163656. It is stated that in view of the recommendations of the Select Malpractice Committee, the petitioner was permitted to write advance supplementary examinations and the same was informed to the petitioner on 25.5.2006 telegraphically apart from separate telegraphic information to the Headmaster of the school, and, nominal rolls were sent by Speed Post on 24.5.2007. It is stated that as the petitioner himself has accepted his involvement in malpractice, action was taken as per the scale of punishment indicated in G.O.Rt.No. 872 dated 16.5.1992.

In this case, it is submitted by Smt. S.A.V. Ratnam, learned counsel for the petitioner that there is absolutely no basis for booking a case against the petitioner as he has not indulged in any malpractice so as to cancel the performance of the examinations written by the petitioner in the month of March, 2006. It is submitted that, in any event, as the Malpractice Committee has imposed the punishment of cancelling the performance without conducting any summary enquiry and without giving any opportunity to the petitioner to represent his case, the action of the respondents is in violation of the Principles of Natural Justice. The learned counsel relied on a decision of the

Supreme Court in **Board of High School v. Ghanshyam**[1], and, the decisions of this Court in **V.Amarnath v. Board of Intermediate Education, Hyderabad**[2], **and, Y.Nalini Kanth v. Controller of Examination, Nampally, Hyd.**[3].

On the other hand, it is submitted by the learned Government Pleader appearing for the respondents that in this case, when the flying squad had inspected the premises, petitioner's additional answer script was found in possession of the candidate with Roll No.1163658, and, as such, case of malpractice was correctly registered and enquired into. It is submitted that as much as the petitioner himself has admitted his guilt by giving a statement on the very day when the malpractice case was booked against him, there is no need to issue any further notice before imposing the punishment. The learned counsel has relied on the decisions of the Honourable Supreme Court in **Board of Mining Examination v. Ramjee**[4], **Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corporation Ltd.**[5], **and, S.L.Kapoor v. Jagmohan**[6].

Before proceeding further, it is pertinent to notice that for the purpose of malpractice cases and the report, a format is notified by the Director of Government Examinations, and, there is a column provided in the said format to obtain candidate's remarks. In the said format, the endorsement of the petitioner was obtained, in which, in his own handwriting, he has endorsed stating that the additional sheet flew away and the same was taken by the other person and copied and he did not notice. At the same time, the endorsement of the other candidate was also taken on a separate proforma sheet, who has stated to the following effect:

" I have taken paper from 1163656 of additional sheet hiddenly and I copied answer Q 25 from his answer sheet."

It is submitted by the learned Government Pleader that neither any guidelines nor academic regulations were framed to deal with such malpractice cases, except, the orders issued by the Government in G.O.Rt.No.872, Education Department, dated 16.5.1992 wherein the scale of punishment was prescribed having regard to the various nature of offences of malpractice. In this case, it is not in dispute that after malpractice case was booked against the petitioner, except obtaining his remarks in the prescribed proforma, no further opportunity was given to the petitioner by any of the authorities including the Select Malpractice Committee before imposing the punishment.

I n **Board of High School v. Ghanshyam (1 supra),** the Supreme Court, while dealing with the functions of the Examinations Committee constituted under the U.P.Intermediate Education Act and action in cases of examinees using unfair means, had held that it was discharging the functions of quasi-judicial authority and, therefore, the principles of audi alteram partem apply to it and the examinee must be heard before imposing the punishment. A Division Bench of this Court in **V.Amarnath v. Board of Intermediate Education, Hyderabad (2 supra),** while examining a case where the examinee was debarred on the ground of malpractice, set aside the order of the Malpractice Committee on the ground that the said debarment was done without following the principles of natural justice. So also is the judgment of a learned Single Judge of this Court in **Y.Nalini Kanth v. Controller of Examination, Nampally, Hyd.(3 supra).**

Though it is submitted by the learned Government Pleader appearing for the respondents that the petitioner himself has endorsed

his remarks in the proforma prescribed on the date of examination, and as such, the action cannot be said to be in violation of the Principles of Natural Justice, but, even the said remarks were not properly considered and no finding was recorded on the same. Along with the counter affidavit, copies of the report signed by the Headmaster of the School and the District Educational Officer etc. were filed including the proceedings of the Select Malpractice Committee. The Select Malpractice Committee, though acted on the report sent by the Assistant Examiner etc., but, however, did not give any further opportunity to the petitioner before canceling the performance of the examinations written by the petitioner in the month of March, 2006. Even from the candidate's remarks endorsed in the proforma, petitioner has clearly endorsed to the effect that the additional script flew from his table and the same was taken by the other candidate with Hall ticket No.1163656 and the same was taken without his knowledge by another candidate. Even with reference to the said remarks also, there is no finding recorded by the Malpractice Committee to disbelieve the said explanation of the petitioner. The Select Malpractice Committee has not only issued any notice before taking the decision to cancel the performance of the examinations of the petitioner held in the month of March, 2006, but also did not record any finding to reject the explanation offered in the proforma report prepared on the date of booking the case of malpractice against the petitioner.

I n **Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corporation Ltd. (5 supra)**, on which reliance was placed by the learned counsel for the respondents, the Honourable Supreme Court has held that the Principles of Natural Justice are not rigid or immutable and hence, they cannot be imprisoned in a straitjacket, and,

they must yield to and change with exigencies of situations. Further reliance was placed on the decision in **Board of Mining Examination v. Ramjee (4 supra),** wherein, the Honourable Supreme Court has held that Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all, and, if fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Further in **S.L.Kapoor v. Jagmohan (6 supra),** it has been held by the Supreme Court that the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced.

Though in cases relating to malpractices in examinations, a detailed and fullfledged enquiry need not be conducted, but, at the same time, the constituted authority has to come to a conclusion based on the available material on record, and, if necessary, by issuing an opportunity to the affected persons. From the past record, it appears that the petitioner is a bright student securing good marks in the various examinations he had appeared. It is not a case where the petitioner himself has indulged in malpractice by obtaining the material, which is prohibited to be carried. It is a case where allegation is made that the other person has copied by securing the additional answer script of the petitioner without his knowledge. Though, it was found in the report of the Assistant Examiner that the other person by name, G.Samba Siva Raju with Roll No.1163658 has copied all the

answers from the additional answer script of the petitioner, but, at the same time, it was the case of the petitioner that the additional answer sheet flew from his table and he did not notice the same. Though, it is submitted by the learned counsel for the respondents that inasmuch as representation was made on behalf of the petitioner by his father seeking permission for appearance for the supplementary examinations, they cannot turn around and question the cancellation of performance, but, I am of the view that merely because a representation is made seeking permission for writing advanced supplementary examinations, that will not preclude the petitioner from questioning the cancellation of performance of the examinations held in the month of March, 2006. It is obvious that the petitioner was not permitted to write examinations after 25.3.2006, on which date case was registered, and, as such, there was no other option except to make representation at that point of time by the father of the petitioner. In the judgments relied on by the learned counsel for the petitioner, it has clearly been held that the Malpractice Committee while imposing the punishments on the examinees was discharging the quasi-judicial functions and an opportunity is required to be given to the affected students. In this case, not only the respondents have violated the principles of natural justice, but, without recording any finding on the remarks offered by the petitioner in the prescribed proforma on 25.3.2006, simply imposed the punishment cancelling the performance of the examinations held in the month of March, 2006. Earlier, there was no practice of holding advanced supplementary examinations and only supplementary examinations were being held, whereby, one year of study would have been lost. But, with a primary object of saving one precious academic year of the students, who fail at the first instance, such a scheme was evolved, so that even before the start of next academic year, second chance would be afforded to the examinees to

save an academic year. In this case, though the petitioner was permitted to write advanced supplementary examinations, but, by the time the information regarding permission to write the examinations reached the school authorities, one examination i.e. Composite Telugu paper-I was already over, and, he could not write the said paper, and, he was able to write the examinations from the following day i.e. 30th May, 2006 and wrote all the examinations. Inasmuch as this court is of the view that the petitioner was not given any opportunity before imposing the punishment of cancelling the performance of the petitioner in the examinations held during March, 2006 and the Malpractice Committee not only failed to give any opportunity to the petitioner, but, imposed the punishment without recording any finding on the spot explanation filed by the petitioner, it is evidently a fit case to direct the respondents to announce the result of the petitioner by valuing the first paper of the petitioner viz. Composite Telugu Paper-I, written on 21.3.2006.

As much as academic year is already notified and the admissions for Intermediate courses are at the advanced stage, I dispose of the writ petition declaring that the cancellation of the performance of the petitioner's examinations by the Malpractice Committee as illegal and further directing the respondents to announce the results of the petitioner of the examinations in which he appeared in the month of May, 2006 by taking account the examination of Composite Telugu paper-I written by the petitioner on 21.3.2006 forthwith.

The writ petition is allowed to the extent indicated above. No costs.

_____

17 --8—2006 **(R.SUBHASH REDDY, J.)**

VR.

-

---

[1] AIR 1962 SC 1110

[2] 2002 (3) ALD 191

[3] 1999(5) ALD 452

[4] AIR 1977 SC 965

[5] (2005) 7 SCC 764

[6] AIR 1981 SC 136.